

Subpart 4.23—Evidence of Criminal Liability

§ 4.23-1 Evidence of criminal liability.

If, as a result of any investigation or other proceeding conducted hereunder, evidence of criminal liability on the part of any licensed officer or certificated person or any other person is found, such evidence shall be referred to the U.S. Attorney General.

[CGD 74-119, 39 FR 33317, Sept. 17, 1974, as amended by USCG-2004-18884, 69 FR 58341, Sept. 30, 2004]

Subpart 4.40—Coast Guard—National Transportation Safety Board Marine Casualty Investigations

SOURCE: CGD 76-149, 42 FR 61200, Dec. 1, 1977, unless otherwise noted.

§ 4.40-1 Purpose.

This subpart prescribes the joint regulations of the National Transportation Safety Board and the Coast Guard for the investigation of marine casualties.

[CGD 82-034, 47 FR 45882, Oct. 14, 1982]

§ 4.40-3 Relationship to Coast Guard marine investigation regulations and procedures.

(a) The Coast Guard's responsibility to investigate marine casualties is not eliminated nor diminished by the regulations in this subpart.

(b) In those instances where the National Transportation Safety Board conducts an investigation in which the Coast Guard also has responsibility under 46 U.S.C. Chapter 63, the proceedings are conducted independently but so as to avoid duplication as much as possible.

[CGD 76-149, 42 FR 61200, Dec. 1, 1977, as amended by CGD 95-028, 62 FR 51195, Sept. 30, 1997]

§ 4.40-5 Definitions.

As used in this subpart:

(a) *Act* means title III of Public Law 93-633, the Independent Safety Board Act of 1974, (49 U.S.C. 1131).

(b) *Board* means the National Transportation Safety Board.

(c) *Chairman* means the Chairman of the National Transportation Safety Board.

(d) *Major marine casualty* means a casualty involving a vessel, other than a public vessel, that results in:

- (1) The loss of six or more lives;
- (2) The loss of a mechanically propelled vessel of 100 or more gross tons;
- (3) Property damage initially estimated at \$500,000 or more; or
- (4) Serious threat, as determined by the Commandant and concurred in by the Chairman, to life, property, or the environment by hazardous materials.

(e) *Public vessel* means a vessel owned by the United States, except a vessel to which the Act of October 25, 1919, c.82, (41 Stat. 305, 46 U.S.C. 363) applies.

(f) *Vessel of the United States* means a vessel:

- (1) Documented or required to be documented under the laws of the United States;
- (2) Owned in the United States; or
- (3) Owned by a citizen or resident of the United States and not registered under a foreign flag.

[CGD 76-149, 42 FR 61200, Dec. 1, 1977, as amended by CGD 95-028, 62 FR 51195, Sept. 30, 1997]

§ 4.40-10 Preliminary investigation by the Coast Guard.

(a) The Coast Guard conducts the preliminary investigation of marine casualties.

(b) The Commandant determines from the preliminary investigation whether:

- (1) The casualty is a major marine casualty; or
- (2) The casualty involves a public and a non-public vessel and at least one fatality or \$75,000 in property damage; or
- (3) The casualty involves a Coast Guard and a non-public vessel and at least one fatality or \$75,000 in property damage; or
- (4) The casualty is a major marine casualty which involves significant safety issues relating to Coast Guard safety functions, e.g., search and rescue, aids to navigation, vessel traffic systems, commercial vessel safety, etc.

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(c) The Commandant notifies the Board of a casualty described in paragraph (b) of this section.

[CGD 76-149, 42 FR 61200, Dec. 1, 1977, as amended by CGD 82-034, 47 FR 45882, Oct. 14, 1982]

§ 4.40-15 Marine casualty investigation by the Board.

(a) The Board may conduct an investigation under the Act of any major marine casualty or any casualty involving public and non-public vessels. Where the Board determines it will convene a hearing in connection with such an investigation, the Board's rules of practice for transportation accident hearings in 49 CFR part 845 shall apply.

(b) The Board shall conduct an investigation under the Act when:

(1) The casualty involves a Coast Guard and a non-public vessel and at least one fatality or \$75,000 in property damage; or

(2) The Commandant and the Board agree that the Board shall conduct the investigation, and the casualty involves a public and a non-public vessel and at least one fatality or \$75,000 in property damage; or

(3) The Commandant and the Board agree that the Board shall conduct the investigation, and the casualty is a major marine casualty which involves significant safety issues relating to Coast Guard safety functions.

[CGD 82-034, 47 FR 45882, Oct. 14, 1982]

§ 4.40-20 Cause or probable cause determinations from Board investigation.

After an investigation conducted by the Board under § 4.40-15, the Board determines cause or probable cause and issues a report of that determination.

§ 4.40-25 Coast Guard marine casualty investigation for the Board.

(a) If the Board does not conduct an investigation under § 4.40-15 (a), (b) (2) or (3), the Coast Guard, at the request of the Board, may conduct an investigation under the Act unless there is an allegation of Federal Government misfeasance or nonfeasance.

(b) The Board will request the Coast Guard to conduct an investigation under paragraph (a) of this section

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within 48 hours of receiving notice under § 4.40-10(c).

(c) The Coast Guard will advise the Board within 24 hours of receipt of a request under paragraph (b) of this section whether the Coast Guard will conduct an investigation under the Act.

[CGD 82-034, 47 FR 45882, Oct. 14, 1982]

§ 4.40-30 Procedures for Coast Guard investigation.

(a) The Coast Guard conducts an investigation under § 4.40-25 using the procedures in 46 CFR 4.01-1 through 4.23-1.

(b) The Board may designate a person or persons to participate in every phase of an investigation, including an on scene investigation, that is conducted under the provisions of subpart 4.40-25 of this part.

(c) Consistent with Coast Guard responsibility to direct the course of the investigation, the person or persons designated by the Board under paragraph (b) of this section may:

(1) Make recommendations about the scope of the investigations.

(2) Call and examine witnesses.

(3) Submit or request additional evidence.

(d) The Commandant provides a record of the proceedings to the Board of an investigation of a major marine casualty under paragraph (a) of this section.

(e) The Board, under the Act, makes its determination of the facts, conditions, circumstances, and the cause or probable cause of a major marine casualty using the record of the proceedings provided by the Commandant under paragraph (d) of this section, and any additional evidence the Board may acquire under its own authority.

(f) An investigation by the Coast Guard under this section is both an investigation under the Act and under 46 U.S.C. Chapter 63.

[CGD 76-149, 42 FR 61200, Dec. 1, 1977, as amended by CGD 95-028, 62 FR 51195, Sept. 30, 1997; USCG-2004-18884, 69 FR 58341, Sept. 30, 2004]

§ 4.40-35 Records of the Coast Guard and the Board.

(a) Records of the Coast Guard made under § 4.40-30 are available to the public under 49 CFR part 7.